

LEWIS
AND
ROCA
LLP
LAWYERS

E-Filed on 1/15/09

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**SEVENTH OMNIBUS OBJECTION
OF USACM LIQUIDATING TRUST
TO DUPLICATE PROOFS OF
CLAIM; AND CERTIFICATE OF
SERVICE**

Date of Hearing: February 20, 2009
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

order disallowing the duplicate Proofs of Claim against USA Commercial Mortgage Company (“USACM”) to the extent such claims are duplicates of another claim that was filed by the same claimant. This Objection is supported by the Court’s record and the Declaration of Edward M. Burr in Support of Omnibus Objections to Duplicate Proofs of Claim (the “Burr Decl.”) filed with the Court today.

I. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007. The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

II. BACKGROUND

1. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), and USA Capital First Trust Deed Fund, LLC (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtors’ post-petition management of the Debtors was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC (“Mesirow”), who served as the Chief Restructuring Officer.

2. On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No. 2376] (the “Confirmation Order”). Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims. The

1 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.

2 Geoffrey L. Berman is the Trustee.

3 **III. APPLICABLE AUTHORITY**

4 1. Under the Bankruptcy Code, any Claim for which a proof of claim has been
5 filed will be allowed unless a party in interest objects. If a party in interest objects to the
6 proof of claim, the Court, after notice and hearing, shall determine the amount of the
7 Claim and shall allow the Claim except to the extent that the Claim is “unenforceable
8 against the debtor . . . under any . . . applicable law for a reason other than because such
9 claim is contingent or unmatured.” 11 U.S.C. § 502(b).

10 2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.
11 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such
12 objections has been extended to February 9, 2009, by this Court’s orders.

13 3. A properly filed proof of claim is presumed valid under Bankruptcy Rule
14 3001(f). However, once an objection to the proof of claim controverts the presumption,
15 the creditor ultimately bears the burden of persuasion as to the validity and amount of the
16 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,
17 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate
18 burden of proof as to the validity of a proof of claim “remains at all times upon the
19 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,
20 1039 (9th Cir. 2000).

21 **IV. OBJECTION TO CLAIMS LISTED IN EXHIBIT A**

22 1. **Exhibit A**, attached, lists Proofs of Claim that appear to be duplicates of
23 other claim(s) filed in the USACM bankruptcy estate. **Exhibit A** identifies the claimant,
24 the claimant’s address, the Duplicate Proof of Claim number, the amount of the duplicate
25 claim, the basis for objection, the surviving claim number, and the amount of the surviving
26



claim. The USACM Trust objects to each of these claims to the extent it is a duplicate and requests that the Court disallow the duplicate claim in its entirety. This objection does not object to the surviving claim. As between duplicative claims, the claim filed last in time was identified as the surviving claim.

2. The surviving claims may be the subject of subsequent objections. This objection is without prejudice to any other objection by any party in interest, including the USACM Trust.

V. CONCLUSION

The USACM Trust respectfully requests that the Court disallow the duplicate claims listed in **Exhibit A** in their entirety. The USACM Trust also requests such other and further relief as is just and proper.

Dated: January 15, 2009.

LEWIS AND ROCA LLP

By /s/ John Hinderaker (#18024)
 Susan M. Freeman, AZ 4199 (*pro hac vice*)
 Rob Charles, NV 6593
 John C. Hinderaker, AZ 18024 (*pro hac vice*)
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169
 Telephone: (702) 949-8200
 Facsimile: (702) 949-8398
 E-mail: jhinderaker@lrlaw.com
Attorneys for the USACM Liquidating Trust

Copy of the foregoing and the pertinent
 Portion of Exhibit A mailed by First class
 Postage prepaid U.S. mail
 On January 15, 2009 to:

All parties in interest listed on
 Exhibit A attached

LEWIS AND ROCA LLP

/s/ Carrie Lawrence